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09/848,583	05/03/2001	Wolfgang Matthes	A-2820	8707

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EXAMINER

PRONE, JASON D

ART UNIT PAPER NUMBER

3724

DATE MAILED: 05/18/2004

14

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 14

Application Number: 09/848,583
Filing Date: May 03, 2001
Appellant(s): MATTHES ET AL.

Laurence A. Greenberg
For Appellant

EXAMINER'S ANSWER

MAILED
MAY 18 2004
GROUP 3700

This is in response to the appeal brief filed 26 February 2004.

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(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

This appeal involves claims 1-10 and 12-13.

Claim 11 is withdrawn from consideration as not directed to the elected apparatus claims.

(4) *Status of Amendments After Final*

The appellants' statement of the status of amendments after final rejection contained in the brief is correct.

No amendment after final has been filed.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct, however, it is noted that, on page 3 line 21, the phrase "synchronous belt 15" is actually "synchronous belt 23".

(6) *Issues*

The appellants' statement of the issues in the brief is correct.

(7) *Grouping of Claims*

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The appellants' statement in the brief that the claims do stand or fall together is agreed with.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

No prior art is relied upon by the examiner in the rejection of the claims under appeal.

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-10, 12, and 13 stand rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

On page 10 lines 19-24 of the specification, it is unclear how the lifting device 2 uses the vertical, non-harmonic oscillatory motion to press knives 3 against the knife 13. It is uncertain if the whole lifting mechanism 2 moves up and down to move the knives 3 towards knife 13 or if the lifting mechanism pivots about the screw (Figure 2) and during this pivot the blades are dropped down to cut the work piece. It is uncertain if knife 13 is a stationary blade to create a shearing cut with knives 3 or blade 13 acts as an anvil and knives 3 perform a punching/stamping cut. The functional language provided is not supported with any structure shown in the Figures or any structural language explaining how the lift mechanism moves knives 3 towards knife 13 to create the cutting action.

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Claims 1-10, 12, and 13 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to claim 1, it is unclear how the lifting device 2 uses the vertical, non-harmonic oscillatory motion to press knives 3 against the knife 13. It is uncertain if the whole lifting mechanism 2 moves up and down to move the knives 3 towards knife 13 or if the lifting mechanism pivots about the screw (Figure 2) and during this pivot the blades are dropped down to cut the work piece. Also, it is not clear what type of cutting is taking place. It is uncertain if knife 13 is a stationary blade to create a shearing cut with knives 3 or blade 13 acts as an anvil and knives 3 perform a punching/stamping cut. The functional language provided is not supported with any structure shown in the Figures or any structural language explaining how the lift mechanism moves knives 3 towards knife 13 to create the cutting action. It is unclear how a vertical, non-harmonic oscillatory motion is created and how the knife-lifting device (2 and 2a-2e) can move when it is fixed to the transmission at 2d.

(11) Response to Argument

Appellants contend that the use of the motor (1) with the belt (23), pulley (21), and transmission (22) achieves vertical, non-harmonic oscillatory motion of the knife-lifting device (2). The examiner strongly disagrees. Using Figure 1 on page 7 of this examiner's answer (and the added reference numbers 2a-2e), the knife-lifting device is considered to include all of the portions so labeled (All other reference numbers have been removed for clarity). Appellants have not provided support or a detailed

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description of the knife-lifting device. As items 2 and 2a-2e appear, from the Figure, to be one piece or bolted together, it can only be interpreted by one of ordinary skill in the art that the knife-lifting device refers to this entire object, in that appellants' reference number 2 must reference all of the object including reference numerals 2a-2e added in the attached figure by the examiner. It cannot be determined how the transmission moves the knife-lifting device in a vertical, non-harmonic oscillatory motion. It is not supported by the specification and it is not shown in the Figures how the transmission and the knife-lifting device interact with one another to create the motion. In addition, it is unclear how the knife-lifting device (2 and 2a-2e) moves in a vertical direction. The knife-lifting device is connected to the transmission at 2d but in order for the knife-lifting device to be able to move in a vertical motion relative to the transmission there would have to be structure allowing 2d to move vertically within the transmission's casing. The knife-lifting device appears to be permanently fixed to the transmission at 2d, thereby restricting any movement at all. In order for the knife-lifting device to obtain vertical, non-harmonic oscillatory motion, the knife-lifting device (2 and 2a-2e) must somehow move, as a whole, vertically, in relation to the transmission.

Appellants also contend that one of ordinary skill in the art would easily understand from the drawings and the disclosure of the invention of the instant application how the lifting device (2) uses the vertical, non-harmonic oscillatory motion to press knives (3) against the knife (13). This is incorrect. The lack of description prevents clear understanding of the claimed and disclosed invention by one of ordinary skill in the art. For example, it is unclear how the motion can be considered non-

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harmonic. A non-harmonic motion would be, in this case, a non-continuous vertical motion. It is unclear how the transmission would allow the knife-lifting device to be a non-continuous motion. Also, one of ordinary skill in the art would not have the ability to know how this apparatus creates a non-harmonic motion without undue experimentation. In addition, it is unclear how the knife-lifting device (2 and 2a-2e) moves in the vertical, non-harmonic oscillatory motion relative to the transmission when part of the knife-lifting device is fixed to the transmission (2d).

Finally, a search was conducted and some relevant art cited. In this matter, none of the references cited provided any insight as to how the apparatus would operate.

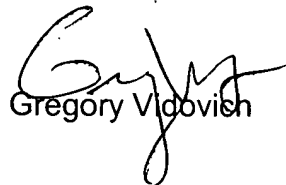
For the above reasons, it is believed that the rejections should be sustained.



JP
May 14, 2004

Conferees

Allan Shoap 



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Respectfully submitted,



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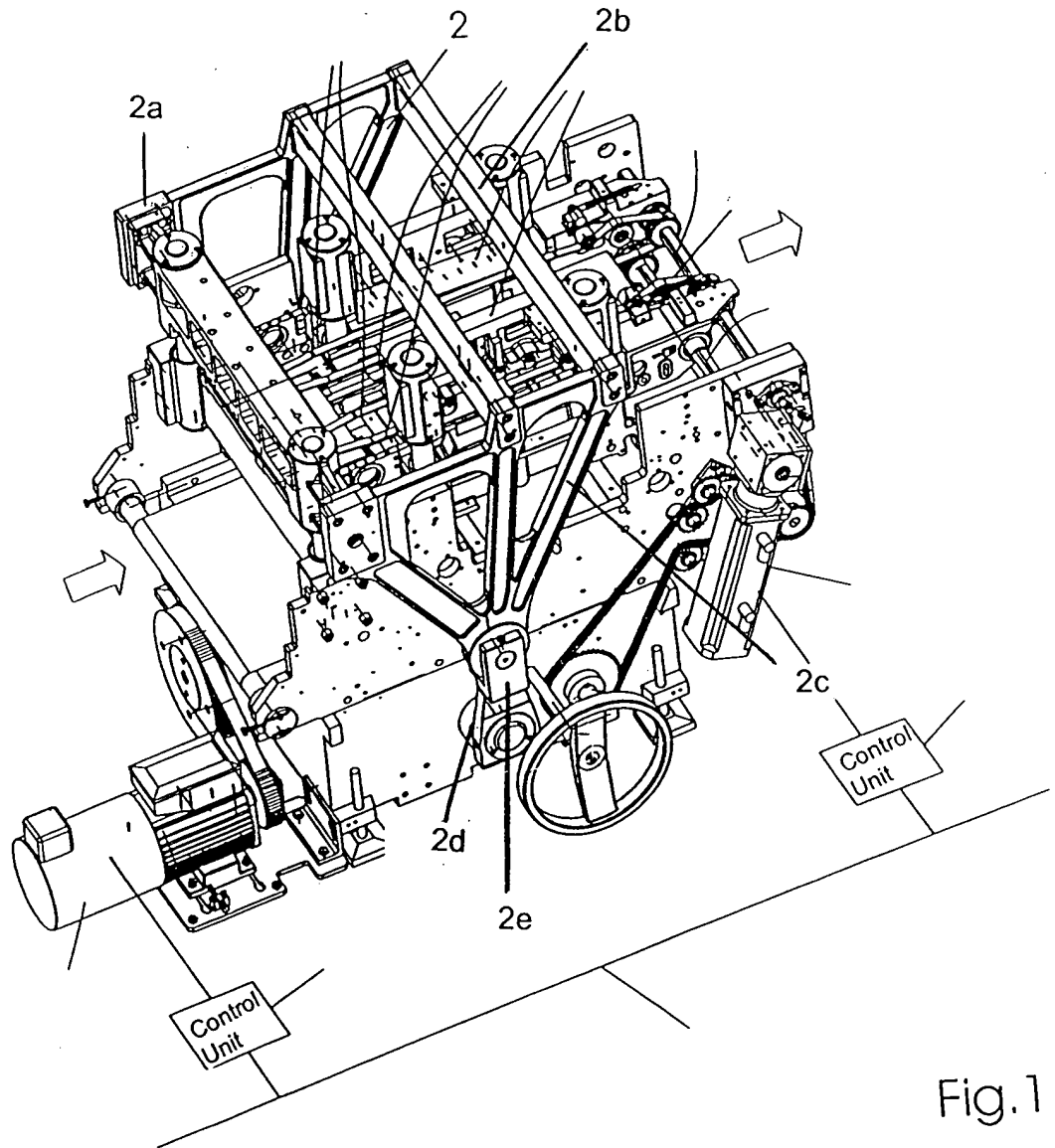


Fig.1